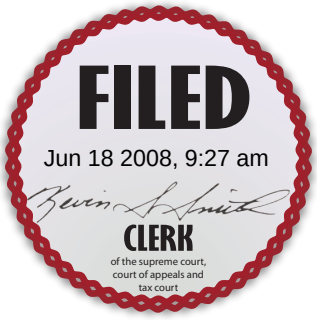

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IN THE
COURT OF APPEALS OF INDIANA

ALFREDERICK WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0712-CR-1081
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Paula Lopossa, Judge
Cause No. 49G01-0605-FA-92313

June 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Alfrederick Williams appeals his four-year sentence for Class C felony child molestation.[1] We remand.

Issue

The dispositive issue is whether the trial court issued an adequate sentencing statement.

Facts

In September 2000, Melony Russell filed a report with the Indianapolis Police Department alleging that Williams had molested her daughter, T.R., while living in Indianapolis in 1994, 1995, and 1996. Williams was Russell's boyfriend at the time. T.R. stated that Williams had intercourse with her on one occasion when she was in the fifth grade.

During this same time frame, Williams, Russell, and T.R. also lived temporarily in Chicago. In October 2000, Williams gave a statement to the Chicago Police Department in which he said that he found T.R. "alluring," and that he sometimes asked her to sit on his lap. App. p. 21. Williams then would grind his pelvis against T.R. and fondle her breasts. In 2002, Williams was convicted in Illinois of aggravated criminal sexual assault and sentenced to four years, two of which he served in the Cook County Sex Offender

[1] The abstract of judgment indicates that Williams was convicted of Class C felony child exploitation. All of the other documents in the record indicate that he was charged with and convicted of Class C felony child molestation.

Unit and two years on home detention. He was successfully discharged from probation in February 2006.

On May 23, 2006, the State charged Williams with one count of Class A felony child molestation, with an alleged offense date of on or between February 1, 2004 and November 30, 2004. The information later was amended to allege an offense date of on or between February 1, 1994 and November 30, 1994, and to add a charge of Class C felony child molesting. On September 19, 2007, the State and Williams entered into a plea agreement to the Class C felony charge, which provided for dismissal of the Class A felony charge and an executed sentencing cap of four years.

The trial court conducted a sentencing hearing on November 13, 2007. During the hearing, Williams argued for the following mitigators: that he pled guilty, that he has expressed remorse, that he successfully completed probation for a similar offense against T.R. in Illinois, and that extended incarceration would be a hardship for his current family and dependents. Williams also introduced into evidence a psychological evaluation performed at the completion of his probation in Illinois, which concluded in part, "Mr. Williams seems to have made significant progress." Ex. A, p. 7. The State argued that Williams violated a position of trust and that the molestation caused great harm to T.R.; it asked that Williams be sentenced to the Department of Correction, but also stated, "if the Court sees fit to put him on some sort of Community Corrections, that would be okay . . . ." Tr. p. 89.

At the conclusion of the hearing, the trial court stated in full:

> All right. Well, the Court is struck by Mr. Williams saying, nobody ever asked him to pay for counseling for [T.R.]. And if—if—if somebody has changed their way of life, that's easy to do without being asked.[2] And this is a perfect example of—of what happens to children when they're preyed on. The Court sentences Mr. Williams to the Department of Correction for four years; gives him credit for 13 days. Now,--and that concludes this matter. Oh, yes, it does.

Id. at 90. There is no written sentencing order in the record. Williams now appeals.

Analysis

Both parties here seem to assume that this case is governed by the current advisory sentencing scheme, rather than the presumptive sentencing scheme that was in place in 1994 when Williams committed this offense. We engage in a four-step process when evaluating a sentence under the current "advisory" sentencing scheme. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, the trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

We initially review a trial court's sentencing decision for an abuse of discretion, subject to our review and revise power under Rule 7(B). Id. at 490. An abuse of

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[2] The trial court had asked Williams whether, after discussing the molestation with Russell and T.R. in 1995, he offered to pay for counseling for T.R. Williams responded, "No, I didn't—I didn't think to. If they had—if somebody had suggested it, I would have." Tr. p. 52.

discretion occurs if the trial court fails to issue an adequate sentencing statement, or the record does not support the reasons given for imposing sentence, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

Additionally, Indiana Code Section 35-38-1-1.3 provides, "After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes." A reasonably detailed sentencing statement is a statement of facts, in some detail, that are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions. Anglemyer, 868 N.E.2d at 490 (quoting Page v. State, 424 N.E.2d 1021, 1023 (Ind. 1981)). Our supreme court has indicated that a trial court's sentencing statement is adequate if it is "sufficient for this Court to conduct meaningful appellate review." Id. at 492. Sentencing statements serve the primary dual purposes of guarding against arbitrary and capricious sentencing, and providing an adequate basis for appellate review. Id. at 489.

The trial court's sentencing statement in this case falls well short of providing a reasonably detailed statement of reasons for the sentence imposed. Aside from passing references to Williams not taking the initiative to pay for counseling for T.R. and the effect of child molesting on her or any victim, it makes no mention of aggravating or mitigating circumstances, although several potentially significant factors were proferred by Williams and the State. The statement lacks insight into the trial court's reasoning. The State notes that Williams received an advisory sentence of four years, and that under

the prior presumptive sentencing scheme, a trial court was not required to issue a sentencing statement if it imposed a presumptive sentence. See Jones v. State, 698 N.E.2d at 289, 290 (Ind. 1998). This rule clearly does not apply to advisory sentences, under the plain language of either Anglemyer or Indiana Code Section 35-38-1-1.3. A sentencing statement must be made anytime a trial court imposes a felony sentence.

It is true that even if a trial court abuses its discretion by not issuing a reasonably detailed sentencing statement, we may choose to review the appropriateness of a sentence under Rule 7(B) instead of remanding to the trial court. See Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007). Both our supreme court and this court often have chosen this route. See, e.g., id.; Feeney v. State, 874 N.E.2d 382, 385 (Ind. Ct. App. 2007). On the other hand, appellate review of a sentence should not necessarily be deemed an adequate substitute for the trial court's issuance of a sentencing statement. We conclude it is necessary to remand this case to the trial court to issue a reasonably detailed sentencing statement.

Conclusion

We remand for the trial court to issue a new, more detailed sentencing statement.

Remanded.

CRONE, J., and BRADFORD, J., concur.